

STATE OF KANSAS  
BEFORE THE DIVISION OF WATER RESOURCES  
KANSAS DEPARTMENT OF AGRICULTURE

In the Matter of the City of Wichita's )  
Phase II Aquifer Storage and Recovery Project )  
in Harvey and Sedgwick Counties, Kansas. )

Case No. 18 WATER 14014

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Pursuant to K.S.A 82a-1901 and K.A.R. 5-14-3a.

**PRE-HEARING CONFERENCE ORDER**  
**FOR THE CONSIDERATION OF PROPOSED MODIFICATIONS TO**  
**THE PHASE II OF THE CITY OF WICHITA'S AQUIFER STORAGE AND**  
**RECOVERY PROJECT**

**COMES NOW**, David W. Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture ("Chief Engineer"), who hereby sets forth the following matters and procedures for the conduct of the hearing regarding the City of Wichita's proposed modifications to Phase II of its Aquifer Storage and Recovery Project ("Project").

1. On July 19, 2018, at 2:30 p.m. a pre-hearing conference regarding the Project was held via telephone.
2. The call was presided over by the Chief Engineer and he was assisted by Kenneth Titus. Representatives and counsel from the following parties were present: the City of Wichita, Equus Beds Groundwater Management District No.2, and the Division of Water Resources. Additionally, non-party representatives from the Southwest Kansas Groundwater Management District No. 3 and the Kansas Water Office were also present.
3. Discussion included the location, time, date, and notice of the hearing, a summary of the issues to be covered at the hearing, the applicable procedures for the hearing, and the setting of all necessary deadlines.

**THEREFORE**, having considered all matters raised at the pre-hearing conference, the Chief Engineer sets forth the following requirements for the Project hearing:

1. A public hearing to consider the Project shall be held on **October 22, 2018 in Wichita, Kansas**. The hearing shall commence at 9:00 a.m. at American Ag Credit, located at 4105 North Ridge Road, Wichita, Kansas, 67205, and shall continue as long as necessary for the full disclosure of relevant facts. If a second day is necessary for the completion of the hearing, proceedings will continue at the same location on October 23, 2018, also commencing at 9:00 a.m. Notice of this hearing shall be provided by the Division of Water Resources by publication in the Wichita Eagle, the Hutchinson News, Newton Now, the Kansas Register, and the Division's website.

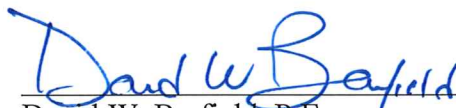
2. This hearing shall specifically consider the following three issues:
  - a. Should the new applications filed by the City of Wichita to allow recovery of aquifer storage credits from existing production wells be approved?
  - b. Should the bottom of the basin storage area be lowered as proposed by the City of Wichita?
  - c. Should the applicable accounting procedures for Phase II of the Project be modified to allow the City to develop recharge credits via its Aquifer Maintenance Credit proposal?

The City shall bear the burden of proof, proving by a preponderance of the evidence that these applications should be approved. Each application must meet the requirements set forth for Aquifer Storage and Recovery Projects in K.A.R. 5-12-1 *et al.* In addition, the new application must meet the requirements set forth in K.S.A. 82a-711, including that the proposed use will not cause impairment, nor will it prejudicially and unreasonably affect the public interest, and the proposed modifications must meet the requirements set forth in K.S.A. 82a-708b, including that the change is reasonable and will not impair existing rights.

3. The hearing, in so far as is reasonable and at the discretion of the Chief Engineer, shall be conducted pursuant to K.A.R. 5-14-3a. The rules of evidence will not be strictly adhered to in the formal phase of the hearing. However, all cross-examinations conducted should have some reasonable relationship to the testimony provided, and the privileges listed in K.S.A. 60-426 through 60-436, and any other privileges recognized by law shall be given effect, in so far as the Chief Engineer determines such application is reasonable. All rules and procedures shall be applied by the Chief Engineer to provide all parties to this action a reasonable opportunity to be heard and present evidence.
4. The hearing shall consist of two phases. The first phase shall be considered the formal phase of the hearing. During this portion of the hearing, those parties designated by the Chief Engineer to participate in the formal phase shall be allowed to present testimony, call witnesses, and cross-examine the witnesses called by other parties participating in the formal phase of the hearing. The second phase shall consist of public comments and no cross-examination will be allowed. As time and logistics may require, the Chief Engineer may allow public comments prior to the conclusion of the first phase of the hearing in order to insure the public has an opportunity to be heard.
5. The following parties shall be considered participants in the formal phase of the hearing and shall present evidence in the order listed:
  - a. City of Wichita
  - b. Equus Beds Groundwater Management District No. 2
  - c. Division of Water Resources
6. All parties agree to accept service of all hearing documents solely via electronic mail.

7. Any additional party wishing to participate in the formal phase of the hearings shall submit such request to the Chief Engineer prior to 5:00 p.m. on October 15, 2018. Any request received after this date shall be considered but may be denied if the additional burdens of preparation placed on the other parties participating in the formal phase of the hearing are determined to be too burdensome. However, all parties not participating in the formal phase of the hearing shall still be eligible to provide oral and written testimony in the informal phase of the hearing and to submit written rebuttal testimony following the close of oral testimony at the public hearing.
8. All parties participating in the formal phase of the hearing shall adhere to the following deadlines:
  - a. September 3, 2018 – Preliminary disclosure of expert witnesses, including a summary of credentials and topics of testimony.
  - b. September 17, 2018 – Close of discovery.
  - c. October 1, 2018 – Deadline to submit any pre-hearing motions to the Chief Engineer and the deadline for the submission of a final Witness and Exhibit List, including any amendments to the previous expert witness disclosure.
  - d. October 15, 2018 – Deadline to submit a pre-hearing brief.
9. Written testimony may be submitted in advance of the hearing by mailing a copy to Ronda Hutton, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas, 66502, Attn: Wichita ASR Project Testimony or an electronic copy may be submitted via email to [ronda.hutton@ks.gov](mailto:ronda.hutton@ks.gov). Written testimony shall be accepted until 5:00 p.m. on November 26, 2018 and may include any post-hearing comments, briefs, or rebuttal to public comments.

**IT IS SO ORDERED, THIS 23<sup>rd</sup> DAY OF JULY 2018.**



David W. Barfield, P.E.  
Chief Engineer, Division of Water Resources  
Kansas Department of Agriculture

Prepared by:



Kenneth B. Titus #26401  
Chief Legal Counsel  
Kansas Department of Agriculture  
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**CERTIFICATE OF SERVICE**

On this 23<sup>rd</sup> Day of July 2018, I hereby certify that the original of the foregoing was sent by electronic mail to:

City of Wichita  
Department of Public Works & Utilities  
455 North Main Street  
Wichita, Kansas 67202  
[jpajor@wichita.gov](mailto:jpajor@wichita.gov)  
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KDA Staff Person